IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 95 of 1984
and
CIVIL APPLICATION NO.6257 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

MARIAMBAI A ADAMJI

Appearance:

1. First Appeal No. 95 of 1984
MR HARDIK C RAVAL for appellant
MR MTM HAKIM with MR AR SHAIKH for Respondent

2. Civil Application No.6257 of 2002
MR MTM HAKIM with MR AR SHAIKH for applicants
MR HARDIK C RAVAL for opponent

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 12/09/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned Advocate Mr.Hardik Raval for the appellant, and learned Advocate Mr.M.T.M.Hakim with learned Advocate Mr.A.R.Shaikh on behalf of the original claimants.

2. Today, i.e. on 12th September 2002, on behalf of the original claimants, a Civil Application No.6257 of 2002 has been filed by Zubeda Abdulhabib and Mumtaz Abdulhabib being the daughters, legal heirs and representatives of Mariambai Abdulhabib Adamji, original claimant stating that during the pendency of the present appeal, original claimant Mariambai Abdulhabib Adamji has expired on 3rd December 1998. They have, therefore, prayed that, they are required to be joined as legal heirs and representatives of deceased Mariambai Abdulhabib Adamji. Along with the application, the death certificate dated 2nd May 2000 of Mariambai Abdulhabib has been produced on record. Learned Advocate Mr.Hardik Raval has no objection if these applicants, being daughters of the deceased, are brought on record as legal heirs and representatives of deceased Mariambai Abdulhabib. Therefore, considering the averments made in the application and considering the submissions made by both the learned Advocates, the delay which has been caused in filing the present application is condoned and accordingly, the two daughters, namely, Zubeda Abdulhabib and Mumtaz Abdulhabib are ordered to be brought on record as legal heirs and representatives, in place of the original claimant, deceased Mariambai Abdulhabib in the appeal. Accordingly, prayer 4(A) made in the application is granted with a direction to amend the cause title accordingly. The Civil application accordingly stands disposed of.

3. The First Appeal has been filed by the Gujarat State Road Transport Corporation ("the GSRTC" for short), challenging the award passed by the Motor Accident Claims Tribunal (Main), Ahmedabad (Rural), Narol in M.A.C.Application No. 369 of 1981, dated 12th April 1983. The Tribunal has dismissed the claim against opponent No.1 for non-prosecution and allowed the claim of the claimant of Rs.50,000/- against the GSRTC with running interest at the rate of 6% per annum from the date of presentation the application, i.e. from 18th July 1981 till payment or realisation and the Tribunal further directed the Corporation to pay the applicant's costs in proportion to the claim allowed and to bear its own entire costs. The Tribunal further directed that out

of the total amount of principal, future interest and costs awarded to the applicant, an amount of Rs.2,500/- and the entire cost amount (minus the deficit court fees) be paid to the applicant in cash. The applicant shall invest, by way of Fixed Deposit in some Nationalised Bank for a period of fifteen years (by renewal from time to time, if necessary) the entire amount of principal and the entire future interest amount with a provision enabling the applicant to collect interest on the deposit every month or every quarter and to spend the same for her own benefit. No loan against, or encashment of, the deposit or any part thereof, shall be allowed till maturity, without the prior permission of the Tribunal.

4. Initially, the original claimant has filed the claim petition for Rs.1,60,000/- as compensation for loss of dependency benefit suffered by her as a result of death of her husband, which is alleged to have occurred consequent upon the rash and negligent driving of ST Bus by the driver - opponent No.1 in the course of his employment with the original opponent No.2 GSRTC.

5. The brief facts of the present appeal are as under:

The husband of the original claimant, Habib Adamji was aged about 46 years on and about 19th April 1980 and was residing at Rajkot and was working as an Artisan preparing decorative wooden pieces and was earning Rs.900/- per month and he was the only earning member in the family. On the morning of 19th April 1980, he was travelling as a passenger in the ST bus which was being driven by opponent No.1 from Rajkot to go to Godhra. According to the original claimant, Opponent No.1 was driving the bus at an extremely fast speed and negligently with the result that the bus met with an accident, as a result of which, the husband of the applicant sustained serious injuries and remained confined to bed till 19th September 1980 on which day he died. In the application, the applicant has submitted that she had to spend about Rs.5,000/- for the treatment of her husband from 20th April 1980 to 19th September 1980.

6. The claim of the original claimant has been objected to by the GSRTC, being opponent No.2, by filing written statement vide Exh.11. It was contended by the GSRTC that opponent No.1 was driving the bus at a moderate speed and carefully and was proceeding towards the "T" junction formed by the meeting of Ahmedabad-Rajkot and Ahmedabad-Bhavnagar Road at Bagodara

and that while the bus was crossing the junction of the two roads, one truck had arrived at an extremely fast speed from the right hand side of opponent No.1 and as a result of which, opponent No.1 had to take the bus towards his further left, but as there was a parked truck on that side, the bus had dashed with that parked truck. In the circumstances, the responsibility for the accident is with the drivers of the two trucks and opponent No.1 was not at all to be blamed for the accident. The GSRTC has also raised the contention about non-joinder of the drivers, owners and the Insurance Companies of the two trucks. Thereafter, the Tribunal has framed the Issues vide Exh.16. During the course of the petition, the original claimant has not taken any steps for effecting service on opponent No.1 for a long time and therefore, the claim against opponent No.1 has been dismissed by the Tribunal, for want of prosecution. Before the Tribunal, the original claimant was examined vide Exh.19, the driver of the ST bus was examined vide Exh.35 and Dr.V.C.Raval was examined vide Exh.41.

7. Before the Tribunal, the GSRTC has raised the contention by submitting an application at Exh.18 stating that the claim petition was non-maintainable for non-joinder of the drivers, owners and the Insurance Companies of the two trucks. This contention has been dealt with by the Tribunal by order dated 16th October 1982. The Tribunal has come to the conclusion that the the bus driver was even partly responsible for the accident in question and there will be an award against opponent No.2 because the liability of tort-feasors and their masters is always joint and several. Thereafter the Tribunal has examined the oral evidence on merits.

8. Before the Tribunal, the original claimant was examined vide Exh.19 and in her evidence, it was deposed by her that her husband was, on the relevant date, travelling in the bus as a passenger and he wanted to go to Ahmedabad. However, thereafter, on the next day, she learnt that the bus had met with an accident and her husband was injured as a result thereof. No doubt, there was no further evidence which has been adduced by the original claimant about the cause of the accident. However, it is important to note that there is no dispute as to the fact that the victim was a passenger in the concerned bus and therefore, there is no question of the deceased being himself guilty of any contributory negligence. The accident in this case consisted of a collision between the concerned bus and a parked truck and therefore, the burden really lies on the opponents to explain as to how the accident had occurred. The

opponent No.1 - ST bus driver was examined at Exh.35 and his version is that he had started driving the bus from Rajkot to go to Godhra in the early morning on 19th April 1980 and he had reached the "T" junction of Ahmedabad-Bhavnagar and Ahmedabad-Rajkot roads near Bagodara at about 7.45 a.m. and while he was crossing the junction, one truck had suddenly arrived from the other road to his right hand side at an extremely fast speed with the result that he had to take his bus to his further left and in doing so, the bus had dashed with a truck which was parked on that side. According to the bus driver, he was driving the bus at a speed of 15 to 20 km/hr. and the bus was proceeding on Rajkot-Ahmedabad highway and the truck had arrived from Ahmedabad-Bhavnagar road which meets Rajkot-Ahmedabad road. Therefore, the question would naturally arise as to whether opponent No.1 driver could not have seen the parked truck as also the alleged other truck arriving from his right hand side much before his own bus reached the junction of the two roads. So far as the parked truck is concerned, it was parked on the same road on which the bus was proceeding and it had its face in the same direction in which the bus was proceeding. Opponent No.1 driver, in his deposition, has admitted that the truck was parked on the correct side and according to him, some mechanical defect had developed in the truck and the conductor and the driver of the truck were attending to that defect. In light of his evidence, there cannot be any doubt that the bus driver could have seen, and had actually seen the parked truck. The truck was parked near the junction of the two roads and therefore, considering that fact, the situation which the bus driver faced was that one truck was parked on the road in which his bus was proceeding and that truck was parked just near the junction of the two roads. In such circumstances, a very high degree of care was to be exercised by the bus driver. He could have clearly anticipated the possibility of a vehicle arriving towards the junction from the road to his right side. He was also aware of the fact that a stranded truck was on the road to his left and therefore, the bus driver, if he was keeping a proper look-out, could have seen the other truck arriving towards the junction when that truck was quite away from the junction. According to the bus driver, he was unable to see the truck from the right side on the ground that there was a police chowky at the corner of the junction and there were some tall trees around that police chowky and his view of the road to his right side was obstructed by those trees. In respect to the said version of the bus driver, there was absolutely no corroboration to any part of his evidence because

neither the conductor of the bus nor any of the passengers is examined on behalf of the GSRTC before the Tribunal. The complaint was lodged immediately after the accident, to the Bagodara Police Station, by Opponent No.1-driver. The conductor has submitted the accident report to the ST Bus depot, but before the Tribunal, the FIR or the accident report were not produced. However, there was a departmental inquiry against the bus driver initiated by the GSRTC wherein the punishment of stoppage of one increment was imposed upon the bus driver. Therefore, considering this fact, the Tribunal has come to the conclusion that the bus driver cannot be exonerated from the charge of negligence of driving the bus. The Tribunal has also observed that such negligence may be partly, if not wholly, responsible for causing the accident in question.

9. Before the Tribunal, Dr.V.C.Raval was examined vide Exh.41. From the oral evidence of opponent No.1, which corroborates the evidence of Dr.Raval, it is clear that Habib Adamji had sustained injuries as a result of the said accident. This fact was admitted by the bus driver in his evidence. Dr.V.C.Raval who was RMO at the Government Hospital, Limbdi has deposed before the Tribunal that Habib was brought to the hospital at about 9.00 a.m. on 19th April 1980 and he had a fracture of the left ilium and another fracture of the left clavicle bone on the outer side. Dr.V.C.Raval has also deposed that on the very next day Habib was discharged from the hospital at his own request. Therefore, on the basis of the evidence of Dr.V.C.Raval, it is clear that Habib had sustained injuries as a result of the said accident. Thereafter the Tribunal has examined the further question as to whether Habib had expired after five months from the date of accident on 19th September 1980 or not. Learned Advocate for the GSRTC has objected to this aspect and contended before the Tribunal that there is total lack of evidence connecting the death of Habib with the injuries which he had sustained on 19th April 1980 as a result of the accident and Habib had only a fracture of the left ilium and other fracture of left clavicle bone and rightly submitted that these two fractures would not result in death. Habib was aged 55 years and such an age cannot be considered to be very old age. According to the evidence of Dr.V.C.Raval, the Tribunal has observed that it is true that the two fractures spoken of by Dr.V.C.Raval will not normally result in death, however, it is very important to note that Dr.V.C.Raval has made it amply clear that since Habib Adamji was in the hospital for 24 hours or less, it was not possible for him to ascertain whether he had any injury to the

internal organs such as bladder, rectum or nerves and vessels in the region of the ilium. The Tribunal has considered the oral evidence of the original claimant that from the date of the accident, her husband Habib had to remain confined to bed till he died on 19th September 1980. Though Habib was not again taken to any hospital after he was discharged from the hospital at Limbdi, the reason given by the original claimant was that she had no money to arrange for hospital treatment of Habib. The Tribunal was impressed by her evidence which was tendered in a natural way and thereafter the Tribunal has come to the conclusion that because of Habib having serious internal injury, he succumbed to the same though some private treatment of the Doctor was taken for a period of one month after discharge of Habib from the hospital. The Tribunal has also observed that the poor lady is a resident of Rajkot and it will be too much to expect her to call the doctor from Rajkot to tender evidence here. In light of these facts, the Tribunal has accepted the oral evidence of the original claimant and has come to the conclusion that Habib's death was a direct consequence of the injuries which he had sustained at the time of the accident.

10. Thereafter, the Tribunal has examined the income of the deceased. According to the deposition of the original claimant, her husband was preparing decorative wooden articles and was also preparing toys and was earning Rs.600/- to Rs.1,000/- per month. According to her evidence, two unmarried daughters are there and her husband was four or five years older than the original claimant. Therefore, at the time of death of the deceased, he was about 55 years old. Before the Tribunal, there was no corroboration of the evidence of the original claimant in respect to the actual income of the deceased and therefore, the Tribunal has considered that the deceased may have an income of Rs.500/- but considering the suggestion from learned Advocate, to take Rs.300/- per month as income, the Tribunal has taken Rs.400/- as the income of the deceased. The Tribunal has though considered Rs.400/- as income of the deceased, it has taken into consideration that the deceased may have incurred expenses for his own maintenance, his wife and two adult daughters and on that basis, the expenses incurred by the deceased would come to Rs.100/- per month and the remaining amount of Rs.300/- per month has been taken as his income. The Tribunal has thus taken Rs.3,600/- as dependency benefit for a year and ultimately a multiplier of 10 years has been applied considering the age of the deceased as 55 years. Thus, an amount of Rs.36,000/- has been awarded for loss of

dependency benefits suffered by her. The Tribunal has awarded Rs.7,500/- as conventional compensation for loss of expectation of life. As the victim survived for about five months and must have undergone pain and shock (with two fractures and some internal injury), the Tribunal has awarded Rs.5,000/- to the estate as compensation under the head of pain and shock and the original claimant has been awarded Rs.2,000/- against the treatment of her husband and further an amount of Rs.1,500/- has been awarded for the special food and medicines and as special damages, and the total of which comes to Rs.50,000/- with interest at the rate of 6% per annum with proportionate costs.

11. Learned Advocate Mr.Hardik Raval appearing on behalf of the appellant GSRTC has raised a contention before us that the Tribunal has committed a gross error in coming to the conclusion that the deceased had expired as a result of the accident occurred on 19th April 1980. He also submitted that the medical evidence does not show any connection with the injuries that the deceased received and the cause of the death, the death having occurred after five months, i.e. on 19th September 1980. He also submitted that considering the injuries which had been received by the deceased, merely a fracture of the left-ilium and another fracture of the left clavicle bone on the outer side have no connection with the death of the deceased. He further submitted that the husband of the original claimant died after five months and the injuries that he received were not sufficient in ordinary course to cause death of a person of 55 years of age. He also submitted that there was no evidence of income of the deceased and therefore, the Tribunal has committed an error in fixing the income at Rs.400/- per month.

12. Learned Advocate Mr.M.T.M.Hakim appearing on behalf of the original claimant submitted that there was the evidence of the widow - original claimant vide Exh.19 wherein, in para 5, the original claimant has deposed that she had to spend Rs.2,000/- for medicines and special food for the treatment of her husband and her husband was unconscious till his death. He could consume medicines with difficulty. This evidence is sufficient to have direct connection from the date of the accident till the date the deceased died because the deceased received injuries due to the accident and remained unconscious from the date of the accident till he died and therefore, looking to her evidence, there is a clear connection which has been established that deceased died because of the injuries received by him in the accident. Learned Advocate Mr.Hakim also pointed out that, in all

four family members were there and therefore, the Tribunal has rightly assessed the income of Rs.400/- per month looking to the family members residing with the deceased and the deceased was the only earning member in his family and therefore, there may not be any corroborating evidence in support of the income, but the fact itself suggests that since the deceased was maintaining four family members, the Tribunal has rightly assessed the income of the deceased as Rs.400/- per month. He also submitted that according to the oral evidence of Dr.V.C.Raval, who suggested that the injured left the hospital prematurely and therefore, at the relevant time, what was the real injury caused to the deceased was not identified by the Doctors. Therefore, the presumption must have to be drawn in favour of the deceased and because of the injuries sustained by him in the internal part because of which, he remained unconscious till he died and therefore, his submission is that the Tribunal has rightly awarded the compensation by assessing the income of the deceased and has also rightly come to the conclusion that the deceased had died because of the injuries received by him in the accident. He submitted that no error has been committed by the Tribunal which requires any interference of this Court.

13. We have considered the submissions made by both learned Advocates and we have perused the original record as well as the judgment delivered by the Tribunal. According to our opinion, the oral evidence of the ST bus driver vide Exh.35 is sufficient to prove the negligence on the part of the ST bus driver. The accident occurred at the junction from Rajkot to Ahmedabad and Bhavnagar to Bagodara. At the relevant time, the bus driver had seen the truck coming from the right side and the other truck parked on the left side. Even though the bus driver was unable to take sufficient care and to stop his vehicle, the bus was moving further and due to that, the accident had taken place. When the bus was about to cross the junction, at that time, on the right side, the truck came and therefore, according to the version of the bus driver, he moved the bus on left by which his bus dashed with the truck. This itself suggests with regard to the negligence and carelessness on the part of the bus driver. The parked truck was seen by him which was on the same side and it was parked on the correct side. Therefore, in such circumstances, the bus driver can avoid the accident if he had taken sufficient care while crossing the junction, but no sufficient care has been taken by the bus driver knowing fully well that on the left side, the parked truck was there and even then he tried to cross the junction, at the relevant time, and

the accident occurred. Therefore, the finding of the Tribunal is that the bus driver cannot be exonerated from the charge of negligence in driving the bus and we agree with the finding given by the Tribunal. No doubt, the bus driver was partly negligent and may not be fully responsible for the accident in question. We have also perused the oral evidence of the original claimant. She was not an eye witness of the incident but in respect of the age of the deceased, i.e. 55 years and he sustained injuries in the accident and from the date of the accident onwards, he remained unconscious till he died and she also deposed before the Tribunal that because of poor condition of the family, she was unable to give medical treatment to her husband and that is how the husband of the original claimant had died because of sustaining injuries in the accident. Her evidence is quite natural and therefore, the Tribunal has rightly relied upon her evidence in respect to establishing the direct connection and nexus between receiving injuries in the accident which ultimately resulted in death of the deceased. The Tribunal has rightly assessed the income of Rs.400/- per month of the deceased.

Now, her say with regard to the income is Rs.900/- as per her evidence, but the Tribunal has assessed the same on the basis of the fact that in all four family members were residing with the deceased and considering that fact, the Tribunal has rightly assessed Rs.400/- per month as the income. So, there is a base to assess the income of the deceased though it may not be corroborated by any other evidence. The fact of having four members in the family itself is sufficient to prove to have the income of Rs.400/- per month to maintain four adult members in the family. We have also considered the oral evidence of Dr.Raval at Exh.41 wherein he has deposed before the Tribunal that on 19th April 1980, when he was working as RMO in the Civil Hospital, Limbdi, Habib was brought to the hospital at about 9.00 a.m. in an injured condition and he was examined by this Doctor and noticed the following injuries:

(1) Tenderness with swelling on the left shoulder region.

(2) Tenderness on the left-hip region.

The radiological examination revealed fracture of the left ilium and fracture of the left clavicle bone on the outer side. The injured was admitted to the hospital and was given analgesic and was given complete bed rest. He was discharged on

20.4.1980 at his own request.

The Doctor has specifically deposed that the injured left the hospital prematurely and therefore, it was not possible to ascertain as to whether there was any injury to the internal organs such as bladder, rectum and other nerves and vessels in the region of the ilium. Though deceased left the hospital prematurely, the subsequent circumstances which had been deposed by the claimant before the Tribunal suggest that from the date of the accident, the deceased remained unconscious till he died which also suggest regarding some internal injury caused to the deceased at the time of accident. This aspect has been considered by the Tribunal in the judgment and has come to the conclusion that no doubt, the deceased must have received some internal injury and he succumbed to the same. Therefore, considering the totality of the circumstances as well as the oral evidence, the Tribunal has rightly come to the conclusion that the deceased must have some serious internal injury and he succumbed to the same and this finding is based upon the evidence on record. According to our opinion, the Tribunal has rightly deducted Rs.100/- from the total income towards his maintenance and thereafter Rs.3,600/- has been considered as his income for one year and also rightly applied the multiplier of 10 in view of the fact that the deceased at the time of accident was aged about 55 years. The Tribunal has also rightly awarded compensation of Rs.36,000/- as compensation for the loss of dependency benefit, Rs.7,500/- as conventional compensation, Rs.5,000/- to his estate as compensation under the head, pain and shock, Rs.2,000/- for the medical treatment and Rs.1,500/- for the special food and medicines and as special damages. According to our opinion, the Tribunal has rightly considered the income and also rightly come to the conclusion that the deceased died because of sustaining the injuries in the accident. There was a direct evidence and nexus between the injuries which ultimately resulted into the death of the deceased.

14. In view of the facts and circumstances, learned Advocate Mr.Hakim has relied upon one decision of this Court in the case of Shantaben Ambalal Sutaria v. Valjibhai Harjibhai Patel, reported in 1991(1) GLH 392. The case cited before is a case wherein a man aged about 54 years, healthy in every respect, was returning to his house on his scooter. He was knocked down by a speeding ST vehicle causing multiple fractures on his person. He was admitted in the hospital and the traction was advised. He was removed out of the hospital with a view to continue the traction at his residence. He had

certain complaints during the intervening period. He died on the 6th or 7th day of the accident and the probable cause of death certified by the medical expert is 'Fat Embolism', which is a common complication in case of multiple fractures when long bones are involved. While citing this decision, learned Advocate Mr.Hakim submitted that in the facts of the present case also, the deceased was aged about 55 years, a healthy man and he was not suffering from any other ailment or disease which could have terminated his life abruptly. Mr.Hakim has also pointed out that Dr.Raval who was examined before the Tribunal vide Exh.41 by the Advocate of GSRTC has not been cross examined and therefore, the evidence of Dr.Raval is required to be accepted and there was no suggestion from the GSRTC that the deceased was suffering from any other ailment or disease which could have terminated his life abruptly. In view of the said decision cited by learned Advocate Mr.Hakim on behalf of the original claimant, we also examined the facts of the of the present case. In the present case, the age of the deceased was about 55 years. There was no cross examination of the Doctor to suggest that the deceased was suffering from any other ailment or disease which could have terminated his life abruptly. On the contrary, there was evidence of the widow of the deceased before the Tribunal that from the date of accident, the deceased remained unconscious till he died and because of the poor condition of the family, the deceased was prematurely shifted from the hospital at his own request. Therefore, considering this decision as well as the facts of the present case, it is clearly established that deceased was having two fractures on his person and because of unconsciousness from the date of accident till he died, there must be some internal injury because of the said accident and therefore, there is a direct evidence and nexus between the injuries which have been received by the deceased in the accident.

15. According to our opinion, there is no error committed by the Tribunal while deciding the application filed by the original claimant. The Tribunal has also rightly awarded interest at the rate of 6% per annum. Learned Advocate Mr.Raval appearing for the appellant has not been able to point any other infirmity in the said award passed by the Tribunal. Therefore, according to our opinion, the Tribunal has not committed any error which requires any interference by this Court and we are in total agreement with the finding given by the Tribunal. There being no substance in the appeal, the same is dismissed. The interim relief, if any, which has been granted by this Court shall stand vacated. There

shall be no order as to costs.

16. It is necessary to note one important fact which has come on record subsequently. During the pendency of the present appeal, before this Court, Mariambai, widow of deceased has expired on 3rd December 1998. She has two daughters, namely, Zubeda Abdulhabib, who is elder daughter and Mumtaz Abdulhabib, who is younger daughter. The younger daughter is married with one Basheer Busari and the elder daughter Zubeda is unmarried, but both the daughters are residing together and the younger daughter is maintaining the elder daughter since long. Both the sisters have filed respective affidavits before this Court. The younger daughter has sacrificed with regard to the compensation in favour of the elder daughter who is unmarried, with a clear understanding that the elder daughter gets at least Rs.75,000/- by way of compensation in the present case. In these type of cases, such sacrifices may not be seen when the sister, knowing fully well that her elder sister will get at least Rs.75,000/by way of compensation. The younger sister has voluntarily not claimed any right upon the said amount which will be received by the elder sister. The younger sister, in response to a question that has been asked by us, has categorically stated that she is not having any claim upon the said compensation only on the ground that she, having a shelter of her husband and her elder sister who does not have any such shelter, is sacrificing her right in favour of the elder sister.

17. We have appreciated such sacrifice on the part of the younger sister. Such instances are rare in the cases like the present one. The younger sister has made it clear before this Court that the entire amount available by way of compensation may be given to her elder sister, namely, Zubeda Abdulhabib as she does not have any source of income to maintain herself as well as she does not have any moveable or immovable property and therefore, the younger sister has filed the affidavit to the effect that she is not claiming any right upon the said amount of compensation which may be given to the elder sister Zubeda. In light of these facts, according to our opinion, the elder sister, Zubeda Abdulhabib who has no source of income, moveable property or immovable property, may be given the entire amount of compensation. Thus, considering this fact, according to our opinion, if some amount is given to the elder sister, Zubeda in cash and the rest of the amount is ordered to be deposited in the Bank with periodical interest, then it will serve the purpose for maintenance of elder sister Zubeda. As per the direction given by the Tribunal, the amount in

question was deposited before the Bank of Maharashtra, Relief Road, Ahmedabad, but learned Advocate Mr.Hakim has submitted that both the sisters were getting interest from the State Bank of Saurashtra, Raiya Road Branch, Rajkot and therefore, he has requested us that the entire amount may be withdrawn from Bank of Maharashtra, Relief Road, Ahmedabad and the same may be deposited in State Bank of Saurashtra, Raiya Road Branch, Rajkot in Fixed Deposit, for a period of two years in the name of Zubeda Abdulhabib. In view of these facts, the total amount of compensation deposited before the Bank of Maharashtra, Relief Road Branch, Ahmedabad in Fixed Deposit Receipt, dated 14th June 1984 which comes to Rs.57,325/- is directed to be withdrawn and transferred and deposited in the name of Zubeda Abdulhabib in State Bank of Saurashtra, Raiya Road Branch, Rajkot which place is nearer to the residence of Zubeda and the same be deposited in Fixed Deposit for a period of two years and the periodical amount of interest lying with the State Bank of Saurashtra may be paid to Zubeda Abdulhabib by the said Bank.

18. It is further directed to the District Court, Ahmedabad (Rural), to release the Fixed Deposit Receipt dated 14th June 1984 which is in the name of deceased Mariambai Abdulhabib for an amount of Rs.57,325/- for transferring the said amount to the State Bank of Saurashtra, Raiya Road Branch, Rajkot.

Direct service is permitted.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)

Sreeram.